

Delta Protection Commission
Thursday, August 26, 1993

Final Minutes

1. Call to Order/Roll Call.

Chairman Torlakson called the meeting to order at Humphrey's Restaurant in Antioch, Contra Costa County at 6:35 p.m. He thanked the City of Antioch for assisting in organizing the meeting location. Mayor Keller welcomed the Commission to Antioch and said the City is pleased to host the meeting and stated that the marina had been constructed with a Department of Boating and Waterways Loan.

Present: Broddrick, Calone, Curry, Ferreira, Keller, McCarty, McGowan, Mello, Potter, Sekelsky, Thomson, Torlakson and Yates.
Absent: Barber, Bland, Fargo, Johnson, Murphy, and Salmon.

2. Approval of July 1993 Minutes.

Commissioner Curry asked for several corrections to his presentation. Commissioner Sekelsky asked that his question of Dave Nelson regarding gas revenues be corrected. With those corrections, on a motion by Commissioner Yates and a second by Commissioner Ferreira, the draft minutes were approved.

3. Chairman's Report.

Chairman Torlakson said the next meeting is scheduled for Thursday, September 30 at 1:00 p.m. in the Community Center in the City of Tracy. He will be unable to attend the meeting. At that meeting the Commission will hear a briefing on the Long Term Management Strategy regarding disposal of dredged material and a presentation from Sherry Teresa on the Center for Natural Lands Management.

The Commission boat trip has been scheduled for Saturday, October 9, 1993 to leave from the Port of Stockton. Commissioners should contact staff regarding ability to attend. Members of the public will be allowed to attend as space allows.

Upcoming events in the Delta include the Walnut Grove Catfish Jubilee, the Delta Chambers mixer and Moo-B-Q and the City of Pittsburg Seafood Festival. He directed staff to prepare letters to the sponsoring agencies.

The California Parks and Recreation Initiative, also known as Cal Paws, is currently being circulated. It is a 1.9 billion dollar bond act for acquisition and development of parks, open space, wetlands, and associated programs.

3a. Creation of Legislative Subcommittee.

Chairman Torlakson outlined the proposed duties and actions of the subcommittee and suggested that Commissioner Johnson and Commissioner Curry be appointed to serve. Dr. Ernst asked if DAPC has formally been dissolved; Chairman Torlakson said no. Commissioner Broddrick asked if the subcommittee will testify on behalf of the Commission at hearings; Chairman Torlakson said the Committee could, but would serve primarily as a filter for the Commission and would only testify if so directed by the full Commission. The creation of the subcommittee was moved by Commissioner Potter and seconded by Commission McCarty, and approved by unanimous voice vote. Commissioner Potter said DWR has a weekly log of pending legislation that may be useful.

Commissioner Potter also commented that he has personal reservations about the Cal Paw initiative and added that there are other similar bond programs pending in the legislature. Chairman Torlakson said staff and/or the Legislative Subcommittee will report back to the Commission at a later date.

4. Executive Director's Report.

Margit Aramburu reported the Commission's office is open in Walnut Grove and that Debby Eddy has started work, along with two other part-time employees: Colleen McMahon and Brandon Friedman.

Ms Aramburu reported that the special account created in the legislation is in place and that the Controller's office has mailed a letter to all courts in the Delta area.

The Long Term Management Strategy regarding disposal of dredged material will be preparing an environmental document and two scoping meetings have been scheduled in Oakland. Those individuals or groups with concerns about the program should submit issues to be addressed.

5. Attorney General's Report.

Rick Frank reported the Attorney General has issued an opinion in response to a letter sent by the Solano County District Attorney's office regarding the constitutionality of the Delta Protection Act. A copy of the letter has been sent to all Commissioners under separate cover. The July 27, 1993 opinion states the Commission is a legitimate body which is empowered to act as set out in the legislation.

Mr. Frank also reported on a case decided in July by the Sacramento Court of Appeal regarding subcommittees. The decision stated that subcommittees of any publicly-funded group should meet in public and use the noticing procedures for public bodies. The case may be reviewed by the State Supreme Court.

6. Public Hearing and Possible Adoption of Conflict of Interest Regulations.

Rick Frank introduced himself and said he is Supervising Deputy Attorney General and Counsel to the Delta Protection Commission. At the request of the Chairman, he coordinated the public hearing on the proposed Conflict of Interest Code for the Commission.

Pursuant to Government Code Section 87302, the Commission proposes to adopt new Conflict of Interest code. This proposed rulemaking action is subject to review by the Fair Political Practice Commission before becoming final.

The Commission began this rulemaking proceeding in early June. The Commission published the notice and opened the rulemaking record on June 11th. By law, Commission is required to provide a minimum of 45 days for public comment. The cut-off date for written comments is Thursday, August 26th, 76 days after notice was given. This hearing is being held on the 76th day following notice.

The documents that make up the rulemaking record include the following:

- 1) The notice of Intent to Adopt a Conflict of Interest Code
- 2) Standard terms of all state conflict of interest code adopted by the F.P.P.C. in its own regulation (to be incorporated by reference in the Commission's code)
- 3) Appendix A - List of Commission designated positions and assigned disclosure categories
- 4) Appendix B - disclosure categories
- 5) Written comments (none received to date)

Following close of tonight's hearing, the Commission will consider any public comments that were received in a timely manner. If the Commission decides to make no changes or nonsubstantial changes to its proposed code, it will adopt the code, providing a summary and response to any comments received. This action closes the rulemaking record, which record is then submitted to F.P.P.C. for review and approval.

He said speakers should fill out a 3 x 5 card with name, affiliation and approximate time needed to complete the presentation.

Ted Prim of the State Attorney General's Office reviewed the legal basis for conflict of interest regulations, reviewed the basic issues of disclosure and disqualification, stated that there is a booklet which outlines this information which the Commissioners have received and said that the forms will be filed in the Commission office and are part of the Commission's public

records. In addition, another state law precludes Commissioners from having any financial interest in any contract with the Commission.

Chairman Torlakson asked since the intent of the legislation is to have property owners on the Commission, how will this affect Commission decision-making and if a majority becomes "conflicted out" how would that be addressed; Mr. Prim said government salaries are not counted as income under FPPC rules. He said there would be no problem of incompatible offices as they are set out in the Code. He said there are procedures set out in State law to ensure that there will be a voting quorum even if there are conflict issues.

Commissioner Mello said he was concerned as the regs address real property in or within two miles of the Delta, and said any regional land use decision may affect property values of these lands; Mr. Frank said maps of the primary and secondary zone would need to be checked; Commissioner Potter stated that the lines are being plotted on U.S.G.S. quad maps. Mr. Prim said he does not know much about the individual financial interest of the Commissioners. Commissioner Mello said the five reclamation district representatives all own land in the Delta. Commissioner McCarty said they are landowners or are legal representatives of land owners. Mr. Prim said the test is if the decisions affect "significant segment of the public". He said he would look into this further. Commissioner McCarty suggested making the provisions for land owners part of the Conflict of Interest code; Mr. Prim said that is not necessary as these would be general disqualifications which affect certain officials and categories of decisions, and the disqualifications would be decision-specific. He said these differentiations are outlined in State law. Mr. Frank said the key vote to adopt the Plan will not take place until next summer and he will continue to research these issues with the FPPC and forward the resulting advice to the Commission.

Commissioner Torlakson said this is similar to local government where most are property owners and General Plan decisions will affect values of specific pieces of property. Commissioner Keller asked about the need to disclose campaign contributions from Property owners; Mr. Frank said yes, it is necessary and Mr. Prim agreed. Commissioner McGowan agreed there is a limit; asked that the amount be clarified. Commissioner Potter underscored the legislative intent to include reclamation district representatives as voting members. Chairman Torlakson asked that the attorneys report back, but the Commission understands that the intent of the legislation is clear that all members participate as full voting members.

The public hearing was opened. Dr. F.H. Ernst asked for a copy of the proposed regulations and asked where the forms would be filed; Mr. Frank gave Dr. Ernst a copy of the proposed regs and said the completed forms would be filed at the Commission office

and at the FPPC offices. The public hearing was closed.

Commission Yates moved adoption of the regs as proposed by staff; second by Commissioner Thomson. Commissioner McCarty asked if the regs could be amended; Mr. Frank said yes, but the process is lengthy. The regs were adopted by unanimous voice vote.

7. Public Hearing and Possible Adoption of Regulations Regarding Appeals of Local Actions to the Commission.

Rick M. Frank introduced himself as Supervising Deputy Attorney General and Counsel to the Delta Protection Commission. He said he would coordinate the public hearing on the proposed new regulations establishing the procedures by what the Commission processes, considers and resolves appeals from local government decisions that are brought before it by interested persons.

Pursuant to Public Resources Code section 29770 (b), the Commission proposes to adopt these new regulations.

The DPC initiated this rulemaking proceeding on June 25th. The Commission in turn, published the notice and opened the rulemaking record on June 28th. By law, the Commission is required to provide a minimum of 45 days for public comment. The cut-off date for written comments was Thursday, August 26th, 59 days after notice was given. This hearing is being held on the 59th day following notice.

The documents that make up the rulemaking record include the following:

- * the Notice of Proposed Rulemaking
- * the Initial Statement of Reasons
- * the text of the proposed regulations
- * the written comments received by the Commission

He said the Commission received the notice by mail, with the initial statement of reasons and the text of the proposed regulations. The written comments received by the Commission prior were available to be reviewed to their being published by the Commission as part of its Final Statement of Reasons.

Mr. Frank recited the names of the individuals, and their applicable affiliations, who have filed comments with the Agency to date: (Read List)

- * San Joaquin County
- * Solano County
- * Department of Water Resources

Following the close of tonight's hearing, the Commission will consider all public comments that were received in a timely manner.

If the Commission decides to make no changes or nonsubstantial changes to its proposed regulations, it will prepare and adopt the Regulations, a Final Statement of Reasons, providing a summary and response to all comments received. This action closes the Rulemaking Record, which Record is the submitted to OAL for review. If the Commission decides to make substantial changes, "sufficiently related" to the text, then the Commission must issue a notice of proposed changes. A 15-day public comment period ensues. Upon consideration of the comments received, the Commission may then move on to prepare a Final Statement of Reasons.

At the door was a box for any written comments to be submitted at the meeting.

Speakers should fill out a 3 x 5 card with name, affiliation and approximate time needed to complete the presentation.

Commissioner McCarty presented comments including: delete 3(e) and (f), Sec 5 change 3 working days to 10; Sec 6 change to require proponent to bring documents, Sec 11(c) delete reference to local government record; Sec 11(d) correct typo and Sec 12 (b) and (c) delete reference of finding. Commissioner Potter said Sec 3(e) and (f) seemed burdensome.

Mr. Frank and Chairman Torlakson reviewed the proposed changes section by section:

Re Sec. 2, the Commissioners suggested clarifying "action" and selecting the shortest period.

Re Sec. 3, there was discussion of the need for appellant to submit names and addresses of interested parties; staff agreed to see if these would be part of the local government record.

Re Sec. 4, the Commission asked that the referenced sections be included.

Re Sec 5, there was a suggestion to change three days to five days.

Re Sec 6, there was discussion of number of days, five was generally agreed to, add a definition of "prompt" and define "all" relevant documents.

Re Sec. 9 and 10, there was discussion of having a preliminary meeting to determine if the appeal is valid, then scheduling the actual appeal at a second meeting. There was discussion of delegating review of validity to staff.

Re Sec. 11, discussion of de novo review and need to limit evidence to previous record; if new evidence, matter should be remanded to local government.

Re Sec. 12, discussion of need for written findings, burdensome versus need for more complete record.

Re Sec. 13(b), should include appellant.

San Joaquin County staff also commented that the process would add some new local costs; Mr. Frank responded that the costs are

associated with the legislation, not the regulations.

The public hearing was opened. Dr. F.H. Ernst asked for copies of the comments submitted by San Joaquin County and Solano County; asked for clarification of Section 29770 of the Public Resources Code and asked for clarification of Section 29770 (a) of the Delta Protection Act. There were no other speakers; the public hearing was closed.

Mr. Frank suggested that the matter be continued to the next meeting to allow staff to study the comments submitted by the public and the Commission and make appropriate changes or rebuttals.

Commissioner Keller asked if there was a way to recover costs from the appellant; Mr. Frank said that is possible, subject to Commission direction. Chairman Torlakson suggested that the Finance and Budget Committee review the concept of a minimum filing fee, which could be refunded in the appeal is successful.

Commissioner McGowan asked if a project is denied, could that action be appealed; Mr. Frank said denials could not be appealed to the Delta Commission.

Commissioner Keller asked staff to provide information on the types of contacts which must be declared.

8. Informational Briefing: Floods and Flooding.

Ms Aramburu said James Coe would be speaking for Mr. Helms, that Mr. Montane had not been able to attend, and that Frank Hauck would be speaking for Mr. Cockrell.

James Q. Coe, P.E., Chief of Flood Operations for Department of Water Resources, gave an overview of the history of Delta flooding. In 1849, the area was settled and Sherman Island was sea level; levees were needed to farm the areas. In 1850, wetlands were given to the States; in 1861, the Reclamation Act was approved. In 1869 Sherman Island was leveed and flooded from time to time until 1969.

Flooding incidents in the Delta islands seem to occur in groups. Seepage, boils, and cracks are evidence that there is levee stress. Moving water, including wind waves and boat wakes, is an enemy of levee integrity. High water increases levee stress and may lead to overtopping. High water is caused by tidal action of the moon and sun, low atmospheric pressure, and high runoff. The latter two effects are common during storm conditions.

Commissioner Calone commented that the release of waters from upstream dams is a major downstream problem which contributes to flooding and erosion of Delta islands.

Frank W. Hauck, Emergency Planner, San Joaquin County Office of Emergency Services, described the office's program. The department asked four questions: 1) has flooding historically affected the County; yes, there have been numerous problems; 2) Is the hazard significant; yes, millions of dollars of property loss, luckily not major loss of life; 3) How frequent is the problem; there have been major floods in modern history; and 4) How much property and how many people would be affected in the worst case scenario (which would be catastrophic failure of a full dam in a storm at high tide); high losses probable in this scenario. Mr. Hauck described how the County department coordinates with the State offices and described the location and activities of the command center. Mr. Potter asked about coordination with other Counties and other State offices; Mr. Hauck described the mutual aid between the agencies and counties.

9. Public Hearing and Possible Adoption of Subcommittee on Budget and Finance recommendations on Expending \$50,000 from Lawsuit, Recommended Budget for Fiscal Year 93-94, and Recommendations on Long-Term Funding Concept.

Ms Aramburu said the Committee met and reviewed a number of items. The Committee reviewed a list of supplies, equipment and services to be purchased with the monies from settlement of a lawsuit between San Joaquin County and Santa Fe. Second, the Subcommittee recommends a budget which eliminates a third permanent staff position and instead rolls that money into funds for consultants and student assistants. The budget reflects expenditure of the lawsuit monies for most equipment; no furniture has been purchased. Third, the last section outlines the first step in the long-term plan to pursue voluntary funding mechanism such as a Delta environmental license plate. Adoption of this recommendation will allow the staff to pursue grants and other means of acquiring funds. The subcommittee will continue to discuss these issues.

Commissioner McCarty, Chair of the Subcommittee, said the committee recommends the Commission repay the loan from the Environmental License Plate Fund, is seeking to identify ways to generate new income to fund the Commission's program and staff, and wants to emphasize the voluntary approach to generation of funds.

The public hearing was opened; there were no public comments; the public hearing was closed. Recommendations of the subcommittee were moved by Commissioner McCarty, seconded by Commissioner Mello, and approved by voice vote.

10. Public Hearing and Possible Adoption of Subcommittee on Administration and Operations on Meeting Locations and Times.

Ms Aramburu reported that the Subcommittee had reviewed the results of a poll of the Commission which was strongly in favor of

one permanent meeting place, at the Jean Harvie Center in Walnut Grove in the evenings, and the Subcommittee urged the Commission to adopt such a meeting policy.

The public hearing was opened; there were no comments; the public hearing was closed.

On a motion by Commissioner McGowan and a second by Commissioner Keller, the motion was adopted by a voice vote. Chairman Torlakson announced that the next Commission meeting would be a 6:30 p.m. in the Jean Harvie Center in Walnut Grove, not in Tracy as announced earlier.

11. Public Hearing and Possible Adoption of Planning Program.

Chairman Torlakson suggested carrying this item to the next agenda due to the late hour. Ms Aramburu asked if the Commission would allow staff to advertise for consultants with the understanding that actual granting of any contracts is subject to Commission approval of the planning program and the actual contracts. Moved by Commissioner Potter and seconded by Commissioner McCarty to continue the item to the next meeting and allow staff to advertise for consultants, approved by voice vote.

12. Public Comments.

Dr. F.H. Ernst said the June 23, 1993 minutes need to be corrected, that his letter dated August 9, 1993 should be included as part of the record and presented a brief summary of that letter. He asked that notice of the Commission meetings be sent to the cities and counties.

13. Commissioner Comments and Announcements.

Commissioner Potter announced that the Department of Water Resources had recreated the legal boundary of the Delta on a set of U.S.G.S. quad maps for the Commission office.

Chairman Torlakson noted that new State and federal wetlands policies had just been released and asked staff to review the policies and brief the Commission.

14. Adjournment.

The meeting was adjourned at 9:50 p.m.

